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UNITED STATES COURT
DISTRICT OF IDAHO

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Attorneys for Defendants Continental
Casualty Company and CNA Group
Life Assurance Company

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

CHRIS J. DENNISON,

Plaintiff,

vs.

CONTINENTAL CASUALTY COMPANY,
an Illinois corporation; CNA GROUP LIFE
ASSURANCE COMPANY, a wholly owned
subsidiary of Continental Casualty Company.
RURAL TELEPHONE COMPANY, an
Idaho Corporation,

Defendants.

Case No. CIV-02-507-S-LMB

DEFENDANT CNA'S OPPOSI-
TION TO PLAINTIFF'S MO-
TION TO COMPEL

COMES NOW, Defendant CNA, by and through its counsel of record, and hereby states its opposition to Plaintiff's Motion to Compel. There are three basis for this opposition: (1) the witness that Plaintiff seeks to depose, Lisa Scrogam, R.N., is believed

to be no longer employed by Defendant CNA; (2) the Court has already specified which individuals were to be deposed; and (3) Ms. Scrogham is in possession of no discoverable evidence and this deposition would be conducted solely to annoy and harass. Defense counsel is of the belief that the witness Plaintiff seeks to depose, Lisa Scrogham, R.N., is no longer employed by Defendant CNA. The basis of defense counsel's belief is incidental conversations with representatives of CNA and its former employees. Defense counsel is attempting to confirm Ms. Scrogham's employment status from CNA.

If, as it is believed, Ms. Scrogham is no longer employed by Defendant CNA, CNA has no ability to compel her appearance at a deposition. Therefore, forcing or compelling CNA to produce this witness will be ineffective and inappropriate.

The second basis upon which Defendant CNA opposes Plaintiff's Motion to Compel, is that the Court has already determined which witnesses were to be deposed. In its order dated January 9, 2004, this Court granted Plaintiff's Motion to Compel and ordered that Defendant CNA should make available for deposition Doris Gloss, Brian Barnum, Tabitha Kirke, and Nancy Deskins. These individuals were in fact deposed pursuant to the Court's order. Lisa Scrogham was not among those witnesses that Plaintiff requested to depose nor which have been ordered to be produced for deposition by this Court.

Plaintiff, in anticipation of this argument, states in its Motion to Compel that Plaintiff "relied upon Defendant CNA's representation that these individuals [who have been deposed] were the only agents of Defendant CNA responsible for their review and denial of Plaintiff's claim for benefits." Plaintiff does not cite to the record, or any pleadings, wherein

such purported "representation" was made by Defendant CNA. Defendant CNA directs the Court's attention to its initial disclosures served on the parties January 6, 2003. In the mandatory disclosure wherein the party is required to name those individuals likely to have discoverable information the disclosing party may use to support its claims, answering Defendant CNA responds that this information can be obtained from the claim file, a copy of which was attached to that initial disclosure. The name of Ms. Scrogam is contained within documents in that claim file which could have been gleaned from Plaintiff's counsel.

The third basis for Defendant CNA's opposition to Plaintiff's Motion to Compel is, as has been previously argued, the witness has no information which is relevant, nor reasonably calculated to lead to the discovery of admissible evidence. As has been argued under the ERISA statutes, the Court's review is limited to the administrative record which is already before the Court. Therefore, testimony of witnesses cannot be considered by the Court and therefore, taking the deposition serves no useful purpose.

In the Court's order on Plaintiff's previous motion to compel deposition testimony, the Court does allow the depositions of those requested by Plaintiff but such depositions were to be limited to determining the existence and effect of an alleged conflict of interest. In the depositions that have already been completed, Plaintiff's counsel touched little, and in the case of as least one witness, not at all, on this area. Rather, the deposition consisted of little more than a chastisement of the witnesses for their failure to agree with Plaintiff's counsel that his client is entitled to policy benefits. Taking further depositions in this case, including that of Lisa Scrogam, serves no purpose other than harassment.

CONCLUSION

Based upon the foregoing, Defendant CNA respectfully requests this Court deny Plaintiff's Motion to Compel.

DATED this 20th day of August, 2004.

QUANE SMITH LLP

By: 

Robert D. Williams, of the Firm
Attorneys for Defendants Continental
Casualty Company and CNA Life Assurance Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of August, 2004, I served a true and correct copy of the foregoing DEFENDANT CNA'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL by:

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